

**2003 DRAFTING REQUEST**

**Bill**

Received: **05/01/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Marne**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs  
Children - miscellaneous**

Extra Copies: **rlr  
gmm**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Selling drugs with a child present

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 05/06/2003	jdye 05/12/2003 jdye 05/13/2003		<hr/> <hr/> <hr/> <hr/>			Local Crime
/1			chaskett 05/13/2003	<hr/> <hr/>	sbasford 05/13/2003	mbarman 08/25/2003	

Vers.   Drafted   Reviewed   Typed   Proofed   Submitted   Jacketed   Required

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/?	mdsida	15/13 jld	15/13 cph	rs/cph 5/13			

FE Sent For:

&lt;END&gt;

Mtg w/ Det. Chawey + Marne - Rep Underheim

Possession w/ intent to deliver  
or delivery

+ child is ~~18 or~~ under 18

present in the residence  
+ "curtilage"

perimeter of car

separate offense - Class 4 felony

Penalty enhancer = 5 yrs ala. 961.49

In a car used to transport the drugs

**Dsida, Michael**

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**To:** Wischnewski, Marne  
**Subject:** RE: question

-----Original Message-----

**From:** Wischnewski, Marne  
**Sent:** Monday, May 05, 2003 2:51 PM  
**To:** Dsida, Michael  
**Subject:** RE: question

Just talked with Det. Chavez, he says no.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Monday, May 05, 2003 1:53 PM  
**To:** Wischnewski, Marne  
**Subject:** RE: question

Does the prosecutor have to prove that the offender knew that a child was present?



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2644/7

MGD:.....

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

①

2

Gen  
AN ACT ...; relating to: distributing <sup>controlled substances</sup> ~~drugs~~ in a place in which a child is present  
and providing a penalty.✓

*Analysis by the Legislative Reference Bureau*

Current law prohibits the unauthorized distribution or delivery of a controlled substance and the unauthorized possession of a controlled substance with intent to distribute or deliver it. The maximum term of imprisonment, which consists of a term of confinement in state prison followed by a term of extended supervision, for a person who violates this prohibition ranges from three and a half to ~~10~~ <sup>one-</sup> ~~years~~ <sup>forty</sup> years, depending on which controlled substance — and how much of it — is involved. In addition, the maximum term of imprisonment may be increased by five years if the offender distributes or delivers certain controlled substances (including cocaine, heroin, PCP, LSD, methamphetamine, and marijuana) within 1,000 feet of a school or public park or in other specified places.

Under this bill, the maximum term of imprisonment for unlawfully distributing or delivering a controlled substance or for unlawfully possessing a controlled substance with intent to deliver or distribute it may be increased by five years if: 1) the person commits the offense at a residential building while a child is present; or 2) the person uses a vehicle to facilitate the commission of the offense and a child is in or on the vehicle while the person commits it.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.



For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           SECTION 1. 961.493<sup>✓</sup> of the statutes is created to read:

2           **961.493 Distributing controlled substances around children.** (1) In this  
3 section: <sup>plain</sup>

4           (a) "Child"<sup>✓</sup> means a person who is under the age of 18 years.

5           (b) "Residential building" has the meaning given in s. 101.145 (1) (a).<sup>✓</sup>

6           (c) "Unit" has the meaning given in s. 101.145<sup>✓</sup> (1) (d).

7           (2) If a person violates s. 961.41 (1)<sup>✓</sup> by distributing or delivering a controlled  
8 substance or a controlled substance analog or violates s. 961.41 (1m)<sup>✓</sup> by possessing  
9 a controlled substance or a controlled substance analog with intent to distribute or  
10 deliver it under any<sup>✓</sup> of the following circumstances, the maximum term of  
11 imprisonment for the crime may be increased by<sup>✓</sup> 5 years:

12           (a) The person commits the offense in a unit, in a common area, or on the  
13 grounds of a residential building while a child is present in or on the<sup>✓</sup> unit, common  
14 area, or grounds.

15           (b) The person uses a vehicle to facilitate the commission of the offense and a  
16 child is in or on the vehicle while the person commits the offense.

17           (3) (a) A prosecutor may charge a person under sub. (2)<sup>✓</sup> and s. 961.455  
18 regarding the same incident or occurrence, but the person may not be convicted  
19 under both <sup>this</sup> sections <sup>and s. 961.455</sup> if the child described in sub. (2)<sup>✓</sup> is the person under the age of  
20 17 years involved in the violation of s. 961.455.<sup>✓</sup>

1 (b) A prosecutor may charge a person under sub. (2) ✓ and s. 961.46 ✓ regarding  
2 the same incident or occurrence, but the person may not be convicted under both  
3 <sup>this</sup> ~~sections~~ <sup>of</sup> and s. 961.46 ✓ if the child described in sub. (2) ✓ is the person to whom the controlled  
4 substance or controlled substance analog is distributed or delivered under s. 961.46.

5

(END)

**Barman, Mike**

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**From:** Wischnewski, Marne  
**Sent:** Monday, August 25, 2003 1:11 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-2644/1 Topic: Selling drugs with a child present

It has been requested by <Wischnewski, Marne> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2644/1 Topic: Selling drugs with a child present